IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION 3:05cv238

ANITA POTHIER, et al.,)	
Plaintiffs,)	
)	
Vs.)	ORDER
)	
BANK OF AMERICA CORPORATION,)	
et al.,)	
Defendants.)	
)	

THIS MATTER is before the court on "Plaintiffs['] Notice of Limited Dismissal" (#142) and "Notice of Dismissal By Plaintiffs Pothier, Jimenez, Arias Wright and Faber." (#141). Through such pleadings, the respective plaintiffs are attempting to use Rule 41(a)(1), Federal Rules of Civil Procedure, to dismiss claims as opposed to the entire action. In Gahagan v. North Carolina Hwy. Patrol, 1:00cv52 (W.D.N.C. Oct. 25, 2000), the district court held, as follows:

Rule 41 . . . speaks only to the dismissal of "actions." Plaintiff does not seek, at this juncture, to dismiss the entire action; rather, as stated *supra*, he wishes to dismiss certain claims within this action Rather than a Rule 41 dismissal, the Plaintiff should seek to amend his complaint by meeting the requirements of Rule 15. "A plaintiff wishing to eliminate particular claims or issues from the action should amend the complaint under Rule 15(a) rather than dismiss under Rule 41(a)." *Moore's Federal Practice 3d*, § 41,21[2] (citing *Skinner v. First Am. Bank of Virginia*, 64 F.3d 659 (table), 1995 WL 507264 (4th Cir. 1995).

¹ Due to the limits of electronic filing, citation to such unpublished decision is by reference to the court docket number, with a copy of the decision of the district court being available through PACER and incorporated herein by reference.

<u>Id.</u>, at 3-4 (citations omitted). Rule 41(a) does not appear to be the appropriate vehicle for dismissal of anything less than an entire action. While the court greatly appreciates the efforts of respective counsel in narrowing the issues, the voluntary dismissal must, respectfully, be stricken. Plaintiffs will be granted leave under Rule 15(a) to amend their Second Amended Class Action Complaint in a manner consistent with the above pleadings.

ORDER

IT IS, THEREFORE, ORDERED that "Plaintiffs['] Notice of Limited Dismissal" (#142) and "Notice of Dismissal By Plaintiffs Pothier, Jimenez, Arias Wright and Faber." (#141) are STRICKEN, and plaintiffs are GRANTED LEAVE to amend their Second Amended Class Action Complaint accordingly.

Signed: September 2, 2005

Dennis L. Howell United States Magistrate Judge